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SEC Adds Two New Disclosure Events to Rule 15c2-12.

On August 20, 2018, the US Securities and Exchange Commission (SEC) adopted amendments to Rule 15c2-12 under the Securities Exchange Act of 1934. These amendments require additional disclosure related to the material financial obligations of municipal issuers and conduit borrowers.

Through Rule 15c2-12, the SEC indirectly imposes disclosure obligations on municipal issuers and obligated persons by requiring that underwriters in primary offerings of municipal securities reasonably determine that the issuer or obligated person has agreed to provide certain annual financial and operating information, audited financial statements and timely notice of certain events to the Municipal Securities Rulemaking Board (MSRB). Previously, notice event obligations were largely tied to events affecting the securities issued in that particular offering—for example, payment defaults, changes to credit or liquidity providers, or adverse tax opinions to the extent that any of the foregoing affected those securities. These amendments represent a shift toward more timely and comprehensive disclosure about the issuer or obligated person's financial health.

The SEC has become more active in regulating the municipal securities markets in recent years. An increase in direct placements of debt obligations with banks or investors in lieu of public offerings has led regulators to focus more on general disclosure of financial obligations. The MSRB and other industry organizations had encouraged voluntary disclosure with respect to financial obligations. However, after these efforts elicited only limited participation, the SEC determined that amending Rule 15c2-12 was appropriate to "improve [investors'] ability to analyze their investments and, ultimately, make more informed investment decisions." Consequently, the amendments add the following two notice events:

- "Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
- "Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties."

These notice events are consistent with the SEC's March 2017 proposed rule. In response to several commenters' concerns about the broad definition of "financial obligation" in the proposed rule, the SEC narrowed the definition of "financial obligation" in the final rule to mean a "(i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, and existing or planned debt obligation; or (iii) a guarantee of (i) or (ii)."

While there are substantive differences, these additional notice events will remind conduit borrowers that are also SEC registrants of the Form 8-K events relating to material definitive agreements, material financial obligations and triggering events that accelerate or increase a financial obligation.

The compliance date for these amendments will occur 180 days after the amendments are published in the Federal Register. Beginning on that date, municipal issuers and obligated persons entering

into continuing disclosure agreements required by Rule 15c2-12 will need to include the new notice events. Continuing disclosure agreements entered into prior to the compliance date will not be affected.

For the SEC's press release regarding the amendments, see <https://www.sec.gov/news/press-release/2018-158>.

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